

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EATON CORPORATION,

Plaintiff,

Case No. 03-74844

vs.

HON. GEORGE CARAM STEEH

ZF MERITOR LLC, ARVINMERITOR,
INC. and ZF FRIEDRICHSHAFEN AG,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION
AND PROVIDING CLARIFICATION [DOCUMENT NO. 82]

This matter is before the court on plaintiff Eaton Corporation's motion for reconsideration of the court's June 12, 2006 order of reference to the Special Master for a report and recommendation of claim invalidity based on indefiniteness of U.S. Patent No. 5,624,350 ("Indefiniteness Motion"). The court recognizes that it will have to review *de novo* any objections to findings of fact and conclusions of law recommended by the Special Master, both with regard to claim construction and the Indefiniteness Motion. Fed. R. Civ. P. 53(g)(3) and (4). The court also recognizes that its review will likely include the issue of witness credibility. To effectuate its *de novo* review, the court will hold a hearing, and if necessary, may take live testimony. The court does not see this as an impediment to using the Special Master, and DENIES plaintiff's motion for reconsideration of its order of reference relating to the Indefiniteness Motion.

Plaintiff has also asked for clarification of the Special Master's role in this litigation. The court will attempt to address plaintiff's concerns. The Special Master is

not authorized to directly receive motions from the parties. All motions are to be filed with the court, and the court will determine if a particular motion will be referred to the Magistrate Judge, referred to the Special Master, or retained to be dealt with directly. Motions that are necessary for the Special Master to consider in connection with work being done by him will likely be referred to him by the court. The Special Master is authorized to hold evidentiary hearings necessary to resolve motions that have been referred to him. The Special Master is not authorized to set or revise schedules that have been set by the court, but he may confer with the court on scheduling issues. Finally, the objection and review process relating to the Special Master's recommended legal and factual findings on the Indefiniteness Motion is the same as on the claim construction referral.

It is so ordered.

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: June 26, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on June 26, 2006, by electronic and/or ordinary mail.

S/Josephine Chaffee
Secretary/Deputy Clerk